IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

CRL.A.No. 1146 of 2006(A)

SC.836/2005 of THE COURT OF SESSION, THALASSERY
CP.14/2005 of JUDL. MAGISTRATE OF FIRST CLASS COURT, THALASSERY

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APPELLANT:

ASHOKAN,
CONVICT NO.2920,
CENTRAL JAIL, KANNUR.

BY ADV. ADV.P.V.VIJAYAKUMAR(STATE BRIEF)

RESPONDENT:

BY PUBLIC PROSECUTOR SRI.C.M.NAZAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 29/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.Thankappan, J.

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Crl. A. No. 1146 of 2006

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Dated this the 29th day of November, 2006

JUDMENT

The appellant, accused in S.C. No.836/2005 on the file of the Court of Session, Thalassery faced trial for the offences punishable under sections 307 and 498A IPC. The prosecution case against the appellant is as follows:- The appellant married PW4 on 5-6-1990. The marriage was registered at Peravoor Sub Registry Office. In the above wedlock three children were born to them. On 28-2-2000 at 9 P.M. the appellant with the intention to commit murder of PW4 hit on her head with a wooden plank and poured deadly poison in her mouth and thereby he committed the offences. To prove the charge against the appellant, the prosecution examined PW1 to PW13 and Exts.P1 to P9 were marked. Material object MO1 was also marked. When the appellant was questioned under section 313 of Cr.P.C., he denied the allegation and stated that PW4 actually consumed the poison and the evidence of PW13 was not correct. He also stated that the case was foisted against him.

2. Relying on the evidence adduced by the prosecution both, oral and documentary, the trial court found the appellant guilty under sections 307 and 498A IPC and he was convicted thereunder and sentenced to

undergo rigorous imprisonment for four years and a fine of Rs.5,000/- and in default to undergo rigorous imprisonment for one month under section 307 IPC and rigorous imprisonment for two years under section 498A IPC. It is also ordered that the sentences should run concurrently. The benefit under section 428 Cr.P.C. was granted. The above conviction and sentence awarded against the appellant are assailed in this appeal.

3. Since the appellant is in jail, the appeal has been filed by him through the jail authorities. As the appellant has not defended his case by his own counsel, State Brief was appointed to defend the case of the appellant. This Court heard learned counsel for the appellant as well as the learned Public Prosecutor.

4. The learned counsel for the appellant submits that the trial court went wrong in accepting the prosecution case to find the appellant guilty of the charges levelled against him. The learned counsel also submits that the evidences now adduced by the prosecution are contradictory and there is no medical evidence to prove that he poured the poison in the mouth of PW4.

5. To prove the case against the appellant, the prosecution mainly relied on the evidence of PW1 doctor who examined PW4, PW2, mother of PW4, PW4 the victim and PW13, daughter of both the appellant and PW4. The evidence of PW2 would show that she is not an eye witness to the

incident. She had only given statement before PW8 Head Constable. In the satement there is no case that the appellant poured poison to her mouth. The evidence of PW2 would show that she heard about the admission of PW4 in the hospital. In this context, the evidence of PW8 is relevant. According to PW8, the crime was registered on the basis of the intimation received from the hospital. Hence, the evidence of PW2 cannot in any way help the prosecution. PW1, who examined PW4 ,stated that on 28-2-2000 while she was working as Asst. Surgeon, Government Hospital, Thalassery she examined PW4. According to PW1, the history of the injuries noted was "**on 28-2-2000 at about 9.3- P.M. Nisha found unconscious as consumed some liquid at her house at Kuttimakkool".** PW1 had no information about the pouring of poison to the moth of PW4. When she was asked whether the symptoms of the patient could be caused by a fall, she said that it was possible. Saliva has not been tested to find the presence of poison on the mouth of PW4.

6. PW4 stated that their marriage was on 5-6-1990 and they had 3 children. She also stated that on the day of the incident the appellant came to the house with liquor bottle. He attempted to beat the elder daughter. As she held her daughter, the appellant beat her with MO1. The appellant also beat her with iron pipe. She fell down unconscious. Thereafter, the

appellant poured poison into her mouth. In cross-examination when PW4 was asked whether there were any injuries on her body, she replied positively. Again she was asked whether there was bleeding from the wounds. She said that there was bleeding from the wounds. This Court finds that there is no such bodily injury noted by PW1 in Ext.P1 wound certificate. It has come out in evidence of PW4 that even after the alleged incident, they lived together for five years and recently she left the company of the appellant. The evidence of PW4 coupled with the evidence of PW1 does not possible to come to a conclusion that the prosecution had proved the case against the appellant. The trial court found that the evidence of PW4 was acceptable, as she had no motive to speak against the appellant. But the trial court had not considered the evidence of PW1 doctor to see whether the same corroborate with the evidence of PW4. The trial court had taken the view that even if PW4 herself had consumed the poison, after the lapse of 5 years she would not have come forward to state that the appellant administered poison to her. This Court is not in a position to accept the reasoning adopted by the trial court.

7. The next evidence is that of PW13, a girl aged 14 years. She was not questioned by the police. PW13 had given evidence before the court that the appellant is having the habit of taking liquor and on taking liquor

the appellant used to quarrel with her and her mother PW4. She stated that she was in the juvenile home. The evidence of PW13 cannot be accepted on the reason that she was aged 14 years and she had given evidence as a tutored witness. It is relevant to note that even after the incident PW13 and other children of the appellant along with PW4 were at Wayanad for more than five years. In the above circumstances, this Court is not in a position to accept the evidence of PW13. It is also relevant to note that the investigation conducted by the police is shabby. PW9 to PW12 have not given any evidence before the court with regard to the incident and seizure of MO1. No material object was produced to show the presence of poisonous substance at the scene of occurrence. The only material object produced before the court is MO1 wooden plank. It is relevant to note that either PW4 or PW2 had stated before the court that the appellant used to continuously harass PW4 so as to attract the offence under section 498A IPC. In this context, the evidence of PW2 would show that two years' back the appellant beat on the head of PW4 with a pestle, but there was no complaint before the police.

8. In the above circumstances, this Court is of the view that the findings entered by the trial court are perverse and the prosecution has miserably failed to prove the case against the appellant beyond reasonable

doubt. Hence, the impugned judgment is set aside and the appellant is acquitted of all the charges levelled against him. Therefore, the appellant shall be released forthwith unless required in any other case.

The appeal is allowed as above.

K. Thankappan,
Judge.

K. Thankappan,J.

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Gist of the Judgment
29-11-2006